Peter Buchanan LD. and **McVey.** v. **McVey**

The High Court of Justice of Eire and on Appeal Therefrom to the Supreme Court.

Sup Ct (Irl)

Maguire C.J., Murnaghan and O'Byrne JJ.

1951 June 19.

Kingsmill Moore J.

1950 July 21.

Conflict of Laws--Revenue laws--Whether enforceable in another State-- Indirect enforcement--One man company--Liability in Scotland to excess profits tax--Removal of assets to Ireland--Whether honest for purpose of Scottish company law--Irish court entitled to take cognizance of fraudulent purpose against Scottish Revenue--Action by Scottish liquidator in Eire to recover assets--Attempt to enforce Scottish Revenue laws--Irish court's refusal to lend its hand for this purpose.

1950. July 21. KINGSMILL MOORE J.

Peter Buchanan Ld. was incorporated under the Companies Act, 1929, on October 30, 1930, as a private company having its registered office in Scotland, and with a share capital of << PoundsSterling >> 100, divided into 100 shares of << PoundsSterling >> 1 each. The main object was to carry on the business of wine and spirit merchants, brokers and agents. Though the company was very closely associated with two other companies, Henry Simpson & Co. Ld. and James McVey Ld., both of which were almost completely controlled by the defendant, the defendant was not an original shareholder. In 1937, however, he acquired 96 out of the original 100 shares, and on November 25, 1940, he became the owner of three more. The remaining share was transferred on September 22, 1942, to Miss Farquharson, the confidential cashier and bookkeeper of the company, and she held it as trustee for the defendant, who thus became the beneficial owner of all the shares in the company. Miss Farquharson was also appointed a director, along with the defendant, and thenceforward she and the defendant were sole directors and sole shareholders in the company. She was, in theory, independent, but, having no beneficial interest and being for practical purposes the paid servant of the defendant, she was in no position to exercise an independent judgment or in any way to oppose his designs and, indeed, seems to have conceived it to be her duty to follow his suggestions in all matters of policy, and to see to the proper executing of that policy in questions of detail.

Initially, the company operated in a very small way. Profit and loss accounts were made up to March 31 of each year, and, for the four years 1937-40 inclusive, these accounts showed losses of << PoundsSterling >> 1,206, << PoundsSterling >> 176, << PoundsSterling >> 30 and << PoundsSterling >> 29. The next three years showed profits of << PoundsSterling >> 999, << PoundsSterling >> 3,145 and << PoundsSterling >> 1,221, but in 1944 there was again a loss of << PoundsSterling >> 1,707.

Behind the screen of the books the company was well on the way to making enormous profits. The minutes of an extraordinary meeting of October 3, 1940, record that: "As the directors were of opinion that in the present state of the whiskey market larger funds could be profitably employed, they desired power to borrow up to << PoundsSterling >> 20,000 for this purpose," and that the power was given to them. The authorized sum was actually exceeded, for the balance sheet for 1942 shows that by March 21 of that year the company had borrowed from the defendant the sum of << PoundsSterling >> 37,851, an excess which was subsequently approved and ratified at an extraordinary general meeting on March 6, 1944.

The borrowed money was used to buy

whiskey and so to increase the company's bonded stocks. The value of whiskey was soaring. While in the balance sheet of March 31, 1944, the stocks are shown at <<PoundsSterling>>19,834, "as valued by the managing director" (a sum which presumably corresponds to their cost price), the evidence established that those same stocks were then worth well over <<PoundsSterling>>300,000.

Some time before this the defendant had disposed of his interests in Henry Simpson & Co. Ld. and James McVey Ld. on very advantageous terms. The exact mechanics of this transaction have not been disclosed, but apparently all the facts were put before the Revenue, and the defendant was assured (as was the fact) that the deal did not then attract any liability for excess profits tax. But subsequently, by the provisions of the Finance Act, 1943, the transactions were made retroactively liable to pay this tax, and in July, 1944, the defendant found himself assessed in two sums, <<PoundsSterling>>112,388 and <<PoundsSterling>>42,800, making in all a total of <<PoundsSterling>> 155,188. On December 29 of that year the Lord Advocate, acting for and on behalf of the Commissioners of Inland Revenue, issued a summons against the defendant for that amount, a procedure which by Scots law rendered the property of the defendant liable to "arrestment," which I gather to be a power akin to sequestration.

Retroactive legislation, such as was brought about by the Finance Act, 1943, has recently come in for a great deal of criticism from sober thinkers on the ground that it is ethically and politically immoral. The defendant was emphatically of this opinion, though indignation, more than the niceties of political ethics, seems to have been his motive force. To find himself liable to pay <<PoundsSterling>>155,000, exactable by pains and penalties, in respect of operations which he had been assured were tax-free, called forth the resources of his ingenuity. If the Revenue were bent on taking from him sums to which, as he felt somewhat strongly, they had no moral claim, he on his part determined to do all that in him lay to defeat their devices, now and for the future. He evolved a plan both swift and simple. He would secretly dispose of all the valuable whiskey stocks scraped together with his private assets to safe hands in Ireland, and in due time follow his money to this jurisdiction from where, he was advised, he might safely snap his fingers in the face of a disgruntled Scottish Revenue.

I am satisfied that the general nature of the scheme was mentioned on more than one occasion to Miss Farquharson, and that she expressed no dissent, but gave her agreement - possibly a tacit agreement - to the project. I do not think that all the details of this contemplated transaction were told to her, and I do not think that those details were fully worked out at the initial stages but rather took shape to meet the necessities as they arose. When these necessities did arise Miss Farquharson co-operated actively, and I think that she must be taken to have agreed to both the general plan and its method of working, though I also think that the agreement was given because she thought that, she having no real interest in the company, it was no business of hers to disagree with the man who owned it. She has said that she knew that it was in her power to dissent, and in this I believe her. But she held the view that dissent would be vaguely improper.

The first active steps to carry out the plan were taken on March 6, 1944, by which date, although the assessments had not been made, the defendant knew of his prospective liability. An extraordinary general meeting was held, which ratified the past borrowing in excess of the then limit of <<PoundsSterling>> 20,000, and authorized the director to borrow for the purpose of the company's business further sums not exceeding <<PoundsSterling>>300,000 at any one time. The company's bank account was transferred from the Clydesdale Bank to the North of Scotland Bank Ld., and by March 9 the Glasgow manager of that bank was able to advise the defendant that his directors had sanctioned advances to Peter Buchanan Ld. on

current account to the amount of <<PoundsSterling>> 204,000 against whiskey warrants to be given to the bank of stocks belonging to the company and valued at approximately <<PoundsSterling>>340,000 and a personal guarantee from the defendant to repay the amount. The defendant was to insure the stocks against fire and war risks at their market value, and to be responsible for all charges for rent and warehousing.

The suggested transactions were authorized at a meeting of Mr. McVey and Miss Farquharson held on March 18, 1944, and recorded as an extraordinary general meeting.

In pursuance of this arrangement whiskey warrants were signed in favour of the bank for all the company's stocks, the effect being to put the bank in a position to sell the whiskey under its own name, and from this time forward all sales were so effected even when the loan had been completely discharged and the company's account was in credit. The procedure had two advantages. It gave the bank complete security, and it enabled the sales to be carried through in a way which would not attract the attention of the Revenue to the suggestive realization by the company of all its liquid assets. For even greater security, on March 18 the defendant executed a chattel mortgage of the whiskey already transferred, and of any whiskey to be transferred in the future, to secure repayment of the existing or any future indebtedness of the company to the bank; undertook to maintain the transferred whiskey at such an amount as would show, at current market prices, a margin of 40 per cent. in value over any indebtedness to the bank; and authorized the bank, if such margin was not maintained or if the moneys due were not repaid on demand, to realize the whiskey and pay itself off.

Matters were now completely in train. The bank was secure. The defendant could draw on it immediately for over <<PoundsSterling>>200,000 and put this sum to his credit in Ireland. The stocks could be rapidly realized.

On April 5 the defendant, as director, drew a cheque for <<PoundsSterling>> 200,000 payable to the National Provincial Bank Ld., lodged the cheque in person in the London office, and arranged that the amount be placed by the bank to a credit in the Munster & Leinster Bank Ld., Dublin. Miss Farquharson saw the cheque being drawn, but did not at first know the name of the payee, and so did not enter the cheque in the cash book till she ascertained the full details at the end of the month.

Another cheque, dated July 15, for the sum of <<PoundsSterling>>5,250 payable to the defendant, was drawn by him and by him presented at the Bath Street branch of the North of Scotland Bank Ld., and by his orders this amount was also transferred to credit in the Munster & Leinster Bank Ld., Dublin. In the books of the company it appears as part repayment to the defendant of his loan of <<PoundsSterling>>22,000 odd to the company. Though drawn on July 13, it was not presented till July 26, on which day the defendant thought it time to remove his person from the Scottish jurisdiction and take up his residence in Ireland.

Before leaving, he signed in blank a number of cheques and sheets of headed notepaper, so that Miss Farquharson, who stayed behind, might be able in his absence to carry on the business of the company. From Dublin he kept in close touch with her by telephone, and was also constantly in communication with his Scottish bank manager. He was thus able, in safety, to control the realization of the whiskey stocks.

This realization went on steadily during the summer and autumn of 1944, and by the end of the year moneys to the amount of <<PoundsSterling>>198,999 had been received by the bank, reducing the indebtedness of the company to <<PoundsSterling>>40,435. By January 26, 1945, further moneys to the amount of <<PoundsSterling>>120,088 had come to credit, enabling further withdrawals.

On January 10 Miss Farquharson, acting on

telephone instructions from Dublin, utilized one of the blank signed cheques by filling it in for << PoundsSterling>>16,000 in favour of the National Bank of Scotland, lodging it, and arranging that the amount should be telegraphed to the credit of Mr. Barrett, a nominee of the defendant at the Munster & Leinster Bank Ld., Dublin. Next day the procedure was repeated for <<PoundsSterling>>40,000. As the blank cheques had been by now exhausted, Miss Farquharson used one of the pieces of signed letter paper on which to draw the cheque, and the defendant communicated with the bank manager to ensure that he would honour the cheque in this unusual, though perfectly valid, form. Finally we come to a cheque, dated December 18, but actually drawn by the defendant in Dublin at the end of January and by him back dated to December and forwarded to Miss Farquharson. It is for <<PoundsSterling>>20,000, drawn on the North of Scotland Bank Ld., and made payable to a Mr. Barrett, a nominee of the defendant. It was duly paid.

There are only two further entries in the company's bank account, a lodgment of <<PoundsSterling>>150, which left a final credit balance of << PoundsSterling>>3,212 11s. 0d. (a sum apparently sufficient to meet the claims of all creditors other than the Revenue) and a withdrawal of that balance on May 31 by Sir Andrew Macharg as liquidator of the company.

In addition to those five cheques, moneys of the company to the amount of << PoundsSterling>>45,173 13s. 4d. were applied in various ways to the private use of the defendant, so that a total of <<PoundsSterling>>326,423 13s. 4d. of the moneys of the company, one way or another, were made available for him. As against this must be put the <<PoundsSterling>>22,399 2s. 9d. which the company borrowed from him and a sum of <<PoundsSterling>>345 3s. 8d. cash which he left in the offices of the company. The total indebtedness with which the company seeks to charge the defendant is thus <<PoundsSterling>>303,179 6s. 11d. It remains to see how it is that this claim comes before this court.

Towards the end of 1944 the Scottish Revenue got wind of what was going on, and on January 18, 1945, made assessment on the company for <<PoundsSterling>> 370,000 in respect of excess profits tax and <<PoundsSterling>>15,000 in respect of income tax. Those assessments were confirmed on appeal on March 1, and a petition was then issued at the suit of the Lord Advocate, suing on behalf of the Inland Revenue, to wind up the company compulsorily. On May 2 the Scottish courts made the order for winding up and appointed Andrew (now Sir Andrew) Macharg as liquidator on the application of the petitioners.

Sir Andrew is a most eminent accountant and was admittedly chosen by the Revenue because of his potentialities as a financial Sherlock Holmes. The correspondence which has been proved and his cross-examination by the Attorney- General have made clear what was, indeed, in no way concealed, that Sir Andrew worked in every respect hand in glove with the authorities in an effort "to chase the tax." That was the task for which he had been selected. He first unravelled the detail of the transactions. The next step was a suit by the company in Scotland against the defendant to recover the sum of << PoundsSterling>>303,179 6s. 11d., on which judgment was recovered in default of appearance on May 7, 1946. The judgment was not final in character and no reliance is placed upon it. Finally, on May 28, 1947, a plenary summons was instituted in our courts by the company and Sir Andrew as its liquidator against the defendant.

The summons claimed an account of all moneys due to the company by the defendant as director, trustee and agent and payment of all sums so found due. Alternatively, it claimed payment of <<PoundsSterling>>303,179 6s. 11d. due by the defendant to the company as money had and received to the use of the company. Further specified reliefs were claimed, but no

attempt was made to pursue them at the hearing. The statement of claim was served with the summons and set forth succinctly the facts which I have already stated.

[His Lordship considered the pleadings and continued:] At the trial the plaintiffs fully proved the matters of fact which I have found, and then rested. Mr. Leonard, opening for the defence, raised two points only: first, that the defendant was not liable to account as a shareholder, and that what he did was, quoad the company, unexceptionable; secondly, that this court will not give its aid to collect the taxes of a foreign country. Both points gave rise to learned and most able arguments.

The first point seems to me to admit of a relatively short answer. Admittedly the defendant received the moneys in his capacity as a shareholder and, as such, would not ordinarily be liable to account to the company. But the money was paid to him by means of cheques which he signed as director or was paid to his use in pursuance of instructions issued by him as director. A director is in a fiduciary capacity and so is liable to account for his dealings with the property of the company over which he has control. The defendant is therefore prima facie liable to account. He may be able to account satisfactorily if he shows that he was merely obeying the lawful commands of the company, his fiduciary, and Mr. Leonard says that this is what has happened and that accordingly, even if the defendant should be liable to account, he has discharged himself.

There was no formal meeting of the company to authorize the disposal of its property to the defendant, no resolution, however informal, to that effect. It is now settled law that neither meeting nor resolution is necessary. If all the corporators agree to a certain course then, however informal the manner of their agreement, it is an act of the company and binds the company subject only to two prerequisites: In re Express Engineering Works Ld. [FN1]; Parker & Cooper Ld. v. Reading. [FN2]

FN1 [1920] 1 Ch. 466; 36 T.L.R. 275.

FN2 [1926] Ch. 975.

The two necessary prerequisites are (1) that the transaction to which the corporators agree should be intra vires the company; (2) that the transaction should be honest: Parker & Cooper Ld. v. Reading, [FN3] per Astbury J.

FN3 Ibid. 984-5.

Mr. Leonard submits that the transaction was intra vires the company and, moreover (in the eyes of a court not administering Scots law), was honest. Mr. Wilson, for the plaintiffs, with a wealth of argument, submitted it was neither.

Clause 3 (22) of the memorandum of association sets forth as one object of the company: "To distribute any of the property of the company in specie or otherwise, but so that no distribution amounting to a reduction of capital be made, except with the sanction (if any) for the time being required by law. " The defendant contended that what was done in this case was fully covered by the wording of this clause, was accordingly in pursuance of one of the objects of the company, and so was intra vires. But no memorandum, however specific, can sanction an act which is contrary to the provisions of the Companies Acts or to the fundamental principles of company law as laid down by the courts. One such principle which has been recognized from the earliest period of company law is that the power of a company to pay dividends or distribute its property is not unlimited. There are the interests of the creditors to be considered. A company may not, save in certain exceptional cases and subject to special procedure, reduce its capital or return capital to its members. It must not make a distribution out of borrowed money. It may only distribute what can properly and commercially be regarded as profits.

Peter Buchanan Ld. had acquired large stocks of whiskey, trading on borrowed money. Such stocks had appreciated almost incredibly owing to the lapse of time and the exceptional conditions of the war, and their value was such that their selling price, after repaying

the loan from Mr. McVey, would have shown a profit of about <<PoundsSterling>>300,000. To this extent, if there had been no excess profits taxation, the appreciation of the stocks would be regarded as unrealized profits, and could have been distributed to shareholders after making provision for repayment of the loan and any outstanding debts. But as matters stood, the very act of realization attracted a revenue liability almost exactly equal to the amount of the profits which would otherwise have been made, for excess profits tax, after some small allowances, was payable at the rate of 100 per cent. of the profits made. The profits were, therefore, illusory.

Excess profits tax is imposed on the company and is not, as is income tax, imposed on the dividends distributed and merely deductible by the company at the source as a matter of convenience. It must, therefore - at all events, when once it is assessed - be deducted before it is possible to arrive at the amount which can lawfully be distributed to the shareholders as profits. This was established by a series of cases under the analogous excess profits duty imposed as a result of the 1914-18 war: Collins v. Sedgwick [FN4]; In re Condran [FN5]; Patent Castings Syndicate Ld. v. Etherington [FN6]; Vulcan Motor and Engineering Co. (1906) Ld. v. Hampson. [FN7] I do not overlook the fact that the assessment of the company did not take place till March, 1945, after the distribution had been made, and that an assessed tax does not involve any immediate liability till after the assessment has been made: In re Winget Ld. [FN8] But where such an assessment is pending, and the basis of the assessment has been fixed by statute so that it is known within very narrow limits, it is impossible to contend that in computing what are the net profits legitimately available for distribution to shareholders such contingent liability can be ignored. To do so is clearly to defraud the creditors of the company, who will find all its available assets and capital swallowed up by a priority revenue claim. Accordingly, it would appear that the agreement come to between the corporators was an agreement to distribute property otherwise than out of profits and so was to do an act ultra vires the company and was inoperative for that reason.

FN4 [1917] 1 Ch. 179; 32 T.L.R. 554.

FN5 [1917] 1 Ch. 639; 33 T.L.R. 307.

FN6 [1919] 2 Ch. 254; 35 T.L.R. 528.

FN7 [1921] 3 K.B. 597.

FN8 [1924] 1 Ch. 550; 40 T.L.R. 438.

Does the agreement satisfy the second test of honesty? Mr. Leonard, as well as the defendant when giving evidence, was quite open in admitting that the whole object of the transactions was to defeat the tax claims of the Scottish Revenue and that, from the viewpoint of Scots law, it was an agreement to work a fraud upon the Revenue. The company has its registered office in Scotland. In Scotland it is both resident and domiciled, and so any questions as to its internal organization or the validity of its acts would ordinarily fall to be determined by the Scots law which would categorize the agreement between the corporators as highly fraudulent.

Mr. Leonard meets this argument in a very ingenious manner. He admits it valid up to a point. "But," he says, "it is not all Scots law which is applicable. This court cannot recognize or even inform itself of the revenue provisions of another country; therefore it must blind its eyes to the existence to excess profits tax and, so doing, find that the distribution was made only out of net profits."

This contention (which is quite separate from his later contention that I must not give effect to a suit which is brought to recover a foreign revenue tax) seems to me not to be supported by the weight of authority, although there are certain dicta which, if strained to the full extent of their wording, might seem to cover it.

In Holman v. Johnson, [FN9] decided in 1775, Lord Mansfield C.J. is reported as saying: "There are a great many cases which every country says shall be determined by the

laws of foreign countries where they arise. But I do not see how the principles on which that doctrine obtains are applicable to the present case. For no country ever takes notice of the revenue laws of another." Four years later, in Planche v. Fletcher, [FN10] the Chief Justice repeated his view as to the non-recognition of revenue laws of a foreign country. In James v. Catherwood [FN11] Abbott C.J., with whom Holroyd and Best JJ. concurred, said: "It has been settled, ever since the time of Lord Hardwicke, that in a British court we cannot take notice of the revenue laws of a foreign State."

FN9 (1775) 1 Cowp. 341, 343.

FN10 (1779) 1 Doug. 251, 253.

FN11 (1823) 3 Dow. & Ry.K.B. 190, 191.

Despite the embracing terminology of those pronouncements, the courts, from early times, have not followed them to the full extent of their meaning. In Alves v. Hodgson, [FN12] Cleeg v. Levy [FN13] and Bristow v. Sequeville [FN14] it was recognized that a contract which was avoided in the foreign country where it was made by reason of the absence of a stamp would be treated as void by the English courts even though the requirement of a stamp was a foreign revenue provision. The effect of these decisions has been summarized by Tomlin J. in In re Visser, Queen of Holland v. Drukker [FN15]: "All that those cases do is to indicate that however unwilling the courts may be to recognize foreign law, there are certain cases in which, although they do not enforce the foreign revenue law, they are bound to recognize some of the consequences of that law - namely, those cases when, as one of the terms of the law, contracts are rendered invalid by the foreign law."

FN12 (1797) 7 Term Rep. 241.

FN13 (1812) 3 Camp. 166.

FN14 (1850) 5 Ex. 275.

FN15 [1928] Ch. 877, 883; 44 T.L.R. 692.

Lord Mansfield's pronouncement has also been the subject of criticism by judges and the writers of textbooks. Anson's Law of Contracts, 19th ed., p. 218, says that there is no trustworthy authority for it. Dicey questions it in the 5th edition of his Conflict of Laws (pp. 657-8, n. (q)), and it is disapproved by the editors of the 6th edition (p. 607). Sankey L.J., in Foster v. Driscoll, [FN16] clearly considers the statement too wide, and Scrutton L.J. reserved liberty to consider it in Ralli Brothers v. Compania Naviera Sota y Aznar. [FN17]

FN16 [1929] 1 K.B. 470, 516 et seq.; 45 T.L.R. 185.

FN17 [1920] 2 K.B. 287, 300; sub nom. Sota y Aznar v. Ralli Brothers,36 T.L.R. 456.

I doubt whether Lord Mansfield intended his remarks to preclude a court from informing itself as to the provisions of a foreign revenue law in order to determine the question whether a foreign transaction was or was not fraudulent and void according to the law of that country. But, if he so intended, having regard to the cases and opinions I have cited, I must refuse to follow his view. The agreement between the defendant and Miss Farquharson was one to commit a fraud on the Scottish Revenue. It was not "honest" and so by Scots law, which I hold to be applicable, it was neither a valid act of the company nor effective to bind the company. The company is entitled to question its validity when in a position to do so.

Mr. Leonard's second submission leads into a region where the law cannot be considered free from doubt. He adopted, as a summary of his argument, two passages from Dicey's Conflict of Laws, 6th ed., General Principle No. 2 (p. lxv) and Rule 22 (p. 152). The passages are as follows: - General Principle No. 2: "English courts will not enforce a right otherwise acquired under the law of a foreign country which is ordinarily applicable in virtue of English rules of the conflict of laws; (A) where the enforcement of such right involves the enforcement of foreign penal or confiscatory legislation or a foreign revenue

law. ..." Rule 22: "The court has no jurisdiction at common law to entertain an action (1) for the enforcement, either directly or indirectly, of a penal, revenue, or political law of a foreign State. ..."

The principle that "the courts of no country execute the penal laws of another" has long-standing authority both in England and in the United States. In England it was recognized in Folliott v. Ogden, [FN18] decided in 1792, and in Wolff v. Oxholm, [FN19] decided in 1817. The words quoted come from the famous judgment of Marshall C.J. in The Antelope, [FN20] decided in the United States in 1825, and were cited and adopted in Huntington v. Attrill. [FN21]

FN18 (1789) 1 H.Bl. 123, 131.

FN19 (1817) 6 M. & S. 92.

FN20 (1825) 10 Wheat. 66, 123.

FN21 [1893] A.C. 150, 156.

The application of the principle to revenue laws may be as old, though there is no reported case which lays it down before the present century. In In re Visser, Queen of Holland v. Drukker [FN22] Tomlin J. said: "It seems to be plain that at any rate for somewhere about 200 years, since the time of Lord Hardwicke, the judges have had present to their minds the notion, and have repeatedly said that the courts of this country do not take notice of the revenue laws of foreign States." While admitting that there was no actual reported English decision on the point till 1909, he went on to say [FN23]: "My own opinion is that there is a well-recognized rule, which has been enforced for at least 200 years or thereabouts, under which those courts will not collect the taxes of foreign States for the benefit of the sovereigns of those foreign States; and this is one of those actions which those courts will not entertain."

FN22 [1928] Ch. 877, 881-2.

FN23 Ibid. 884.

The principle as applied to revenue laws had been clearly recognized in the United States as far back as 1843 by Parker C.J. when giving judgment in Henry v. Sargeant, [FN24] but the uncertain state of English authority may be gathered from the absence of any statement as to non-enforcement of revenue laws from the first two editions of Dicey. It appeared for the first time in the 3rd edition, published in 1922 (p. 230).

FN24 (1843) 13 N.H. 321.

The first specific decision seems to have been given by Lord Stormonth Darling in Attorney-General for Canada v. William Schulze & Co. [FN25] The defenders had imported into Canada tweeds which had been seized by the customs for alleged infringements of revenue laws. On an appeal to the Canadian courts against the validity of the seizure the court awarded costs against the defenders (appellants). The Attorney-General for Canada sued subsequently in the Scottish courts on foot of the Canadian judgment for costs. Lord Stormonth Darling dismissed the action, saying [FN26]: "It is a well-established rule of international law that the courts of one country will not execute or enforce the penal law of another; and this rule applies 'not only to prosecutions and sentences for crimes and misdemeanours, but to all suits in favour of the State for the recovery of pecuniary penalties for any violation of its statutes for the protection of its revenue or other municipal laws and to all judgments for such penalties.' I quote these words from the opinion of an American judge, because they were adopted with approval by their Lordships of the Privy Council in the case of Huntington v. Attrill. [FN27] ... The question between the parties was truly whether the forfeiture was lawful, and if the defenders had succeeded the forfeiture would have been annulled. Accordingly, the suit was truly a revenue suit; that is to say, in the sense of the international rule, it was a penal suit. The only question, therefore, is whether the costs of this penal suit can be so dissociated from the suit itself as to fall outside the rule of international law." The learned judge held that the costs could not be so dissociated. This case may

perhaps be regarded more properly as an illustration of that branch of the principle which lays down that this court will not enforce penalties for the infringement of foreign laws than as an example of the branch which prohibits the court from enforcing the provisions of foreign laws of a revenue nature. The next case, however, suggests that there is no real reason for distinguishing between those two branches. In Sydney Municipal Council v. Bull [FN28] the council sued the defendant in England for municipal improvement rate in respect of land in Australia. Grantham J. dismissed the action and said [FN29]: "Some limit must be placed upon the available means of enforcing the sumptuary laws enacted by foreign States for their own municipal purposes. ... The action is in the nature of an action for a penalty to recover a tax; it is analogous to an action brought in one country to enforce the revenue laws of another. In such cases it has always been held that an action will not lie outside the confines of the last-mentioned State."

FN25 (1901) 9 S.L.T. 4.

FN26 Ibid. 4-5.

FN27 [1893] A.C. 150, 157.

FN28 [1909] 1 K.B. 7; 25 T.L.R. 6.

FN29 [1909] 1 K.B. 7, 12.

In In re Visser, Queen of Holland v. Drukker [FN30] Her Majesty sued in England the administrator of the estate of a Dutch subject, who died domiciled in Holland, to recover Dutch death duties. Tomlin J. dismissed the suit on the authority of the last-mentioned case, indicating in the passages already quoted his own opinion of the antiquity of the rule.

FN30 [1928] Ch. 877.

Three modern dicta may be mentioned, occurring in cases which are not themselves direct authorities. In Indian and General Investment Trust Ld. v. Borax Consolidated Ld. [FN31] Sankey J. said: "Whilst it is the duty of an English court to enforce an English taxing Act, it is no part of its duty to enforce the taxing Act of another country." Lord Moulton, delivering the judgment of the Privy Council in Cotton v. Rex, [FN32] said: "There is no accepted principle in international law to the effect that nations should recognize or enforce the fiscal laws of foreign countries." And in In re Cohen [FN33] Evershed M.R. said: "As is well known, it is not the practice of civilized countries, such as France and England, to enforce the revenue laws of the other of them."

FN31 [1920] 1 K.B. 539, 550; 36 T.L.R. 125.

FN32 [1914] A.C. 176, 195.

FN33 [1950] 2 All E.R. 36, 39.

These decisions establish that the courts of our country will not enforce the revenue claims of a foreign country in a suit brought for the purpose by a foreign public authority or the representative of such an authority, and that, even if a judgment for a foreign penalty or debt be obtained in the country in which it is incurred, it is not possible successfully to sue in this country on such judgment. They do not expressly go further, though some of the dicta suggest that there may be a principle that our courts will not lend themselves indirectly to the collection of a foreign tax and will not entertain a suit which is brought for that object. Such a wide extension is also suggested by the authorities which establish that our courts will not entertain an action for the enforcement of a penalty imposed by the laws of a foreign State, a principle which seems to have been the parent of the rule as to not enforcing foreign revenue claims. I will refer only to three of the cases on penalties.

Huntington v. Attrill [FN34] was a decision by the Privy Council in which the judgment was delivered by Lord Watson. The appellant had subscribed to a New York company on the faith of a certificate signed by the respondent and others to the effect that the whole capital of the company had been paid up in cash. The statement was false. A statute of New York provided that if any certificate given by the

officers of a corporation should be false in any material representation, all the officers who should have signed it should be jointly and severally liable for the debts of the corporation contracted while they were in office. The appellant, having failed to recover his money, sued in Ontario the respondent, who had been a director of the company and had signed the certificate. The defence was that the statute imposed a penalty, and so had no extraterritorial effect. The Privy Council held that, viewing the essence of the matter, the statute was not penal because it was enacted not for the benefit of the State, nor primarily as a punishment, but as a means of redress for an injured individual. Lord Watson said [FN35]: "The court appealed to must determine for itself, in the first place, the substance of the right sought to be enforced; and, in the second place, whether its enforcement would, either directly or indirectly, involve the execution of the penal law of another State." He continued [FN36]: "The rule has its foundation in the well-recognized principle that ... all breaches of public law punishable by pecuniary mulct or otherwise, at the instance of the State Government, or of someone representing the public, are local in this sense, that they are only cognizable and punishable in the country where they were committed. Accordingly no proceeding, even in the shape of a civil suit, which has for its object the enforcement by the State, whether directly or indirectly, of punishment imposed for such breaches by the lex fori, ought to be admitted in the courts of any other country."

FN34 [1893] A.C. 150.

FN35 Ibid. 155.

FN36 Ibid. 156.

In Raulin v. Fischer [FN37] the defendant had been prosecuted in the French courts for negligent riding whereby she injured the plaintiff and, under the provisions of French law, in the same proceedings and by the same court she was condemned to pay 15,000 francs to the plaintiff in respect of his injuries. For this sum she was subsequently sued in England, and Hamilton J. held [FN38] that he must determine for himself whether the enforcement of the plaintiff's rights would either directly or indirectly involve the execution of the penal laws of another State." He held that the penal element in the proceedings could be separated from the remedial and gave judgment for the plaintiff.

FN37 [1911] 2 K.B. 93; 27 T.L.R. 220.

FN38 [1911] 2 K.B. 93, 99.

Finally there is Banco de Vizcaya v. Don Alfonso de Borbon y Austria. [FN39] The ex-King of Spain had deposited with the Westminster Bank certain securities with instructions that they were to be held to the order of the Banco de Vizcaya as his agents. After the revolution the ex-King claimed the deposits and they were at the same time claimed by the Spanish bank, on the ground that by decree of the Spanish Government all the property of the King had been confiscated to the State and all Spanish bankers having such property or deposit had been ordered to deliver it to the Spanish Treasury. In an interpleader issue Lawrence J. rejected the claim of the bank, holding that the substance of the right sought to be enforced by the bank was the delivery to it of the securities, and that the enforcement of such right would directly or indirectly involve the execution of what were undoubtedly and admittedly penal laws of the Spanish Republic. He rejected the argument that the bank was only enforcing its own contractual rights against the Westminster Bank. In substance it was not enforcing its own contractual rights but the rights of the Spanish Republic.

FN39 [1935] 1 K.B. 140; 50 T.L.R. 284.

Those cases on penalties would seem to establish that it is not the form of the action or the nature of the plaintiff that must be considered, but the substance of the right sought to be enforced; and that if the enforcement of such right would even indirectly involve the execution of the penal law of another State, then the claim must be refused. I cannot see why the same rule should

not prevail where it appears that the enforcement of the right claimed would indirectly involve the execution of the revenue law of another State, and serve a revenue demand. There seems to me to be a reasonably close parallel between the position of the Banco de Vizcaya and the present plaintiff. In each case it is sought to enforce a personal right, but as that right is being enforced at the instigation of a foreign authority, and would indirectly serve claims of that foreign authority of such a nature as are not enforceable in the courts of this country, relief cannot be given.

I do not consider it necessary to comment on the decision of the House of Lords in Kahler v. Midland Bank Ld. [FN40] or the criticism which has been passed on the judgments of the majority in that case, for it appears that the decision turned on questions of fact and the form of the pleadings, and that the learned Lords who formed the majority of the court did not purport or intend to lay down any new law on the question of the non-enforceability of the penal legislation of a foreign country.

FN40 [1950] A.C. 27; 65 T.L.R. 663; [1949] 2 All E.R. 621.

In the absence of any express authority defining the limits of the principle that the revenue legislation of a foreign State will not be given effect, directly or indirectly, in our domestic tribunal, it is natural to seek for guidance in the reasons which were assigned for establishing this principle when it was first enunciated. Here again the decisions on this side of the Atlantic afford no assistance. The principle is stated as if it were of long standing and so well established, so self evident, as to require no justification. An attempt at analysis of the underlying considerations was, however, made in 1929 by an eminent United States jurist, Judge Learned Hand. In the case of Moore v. Mitchell [FN41] he delivered a special concurring judgment as follows: "While the origin of the exception in the case of penal liabilities does not appear in the books, a sound basis for it exists, in my judgment, which includes liabilities for taxes as well. Even in the case of ordinary municipal liabilities, a court will not recognize those arising in a foreign State, if they run counter to the 'settled public policy' of its own. Thus a scrutiny of the liability is necessarily always in reserve, and the possibility that it will be found not to accord with the policy of the domestic State. This is not a troublesome or delicate inquiry when the question arises between private persons, but it takes on quite another face when it concerns the relations between the foreign State and its own citizens or even those who may be temporarily within its borders. To pass judgment upon the provisions for the public order of another State is, or at any rate should be, beyond the powers of a court, it involves the relations between the States themselves, with which courts are incompetent to deal, and which are entrusted to other authorities. It may commit the domestic State to a position which would seriously embarrass its neighbour. Revenue laws fall within the same reasoning; they affect a State in matters as vital to its existence as its criminal laws. No court ought to undertake an inquiry which it cannot prosecute without determining whether those laws are consonant with its own notions of what is proper."

FN41 (1929) 30 F. (2d) 600, 604.

Judge Learned Hand is well known as an authority on the conflict of laws in a country where the existence of so many co-ordinate State jurisdictions has given to this branch of law a special importance and has caused it to be studied extensively. Whatever be the origin of the rule, the judge's statement of the practical basis which led to its adoption in the courts of common law and his reasons for its observance seem to me convincing and illuminating. Moreover, they suggest the importance of guarding against any attempt to evade the rule or to whittle away the scope of its application.

In deciding cases between private persons in which there is present such a foreign element as would ordinarily induce the application of the principles of a foreign law, courts have always exercised the right to reject such law

on the ground that it conflicted with public policy or affronted the accepted morality of the domestic forum. Contracts valid according to what would normally be considered "the proper law" of the contract will not be enforced if in the view of the court they are tainted with immorality of one kind and another. Delicts committed abroad are not actionable here unless they are torts by our law. Slavery, or any other status involving penal or private disabilities, is not recognized. If, then, in disputes between private citizens, it has been considered necessary to reserve an option to reject foreign law as incompatible with the views of the community, it must have been equally, if not more, necessary to reserve a similar option where an attempt was made to enforce the governmental claims (including revenue claims) of a foreign State. But if the courts had contented themselves with an option to refuse such claims, instead of imposing a general rule of exclusion, the task of formulating and applying the principles of selection would have been one not only of difficulty but danger, involving inevitably an incursion into political fields with grave risks of embarrassing the executive in its foreign relations and even of provoking international complications. Neither common morality nor "settled public policy" would have sufficed to cover the area of necessary rejection; for the nature and incidence of governmental and revenue claims are not dictated by any moral principles but are the offspring of political considerations and political necessity. Taxation originally expressed only the will of the despot, enforceable by torture, slavery and death. Though it may be conceded that in modern times it is more often designed to further a benevolent social policy, and that the civil servant has usurped the position of the executioner as the agent of enforcement, yet in essence taxation is still arbitrary and depends for its effectiveness only on the executive power of the State. Nor is modern history without examples of revenue laws used for purposes which would not only affront the strongest feelings of neighbouring communities but would run counter to their political aims and vital interests. Such laws have been used for religious and racial discriminations, for the furtherance of social policies and ideals dangerous to the security of adjacent countries, and for the direct furtherance of economic warfare. So long as these possibilities exist it would be equally unwise for the courts to permit the enforcement of the revenue claims of foreign States or to attempt to discriminate between those claims which they would and those which they would not enforce. Safety lies only in universal rejection. Such a principle appears to me to be fundamental and of supreme importance.

If I am right in attributing such importance to the principle, then it is clear that its enforcement must not depend merely on the form in which the claim is made. It is not a question whether the plaintiff is a foreign State or the representative of a foreign State or its revenue authority. In every case the substance of the claim must be scrutinized, and if it then appears that it is really a suit brought for the purpose of collecting the debts of a foreign revenue it must be rejected. Mr. Wilson has pressed upon me the difficulty of deciding such a question of fact and has replied on "ratio ruentis acervi." For the purpose of this case it is sufficient to say that when it appears to the court that the whole object of the suit is to collect tax for a foreign revenue, and that this will be the sole result of a decision in favour of the plaintiff, then a court is entitled to reject the claim by refusing jurisdiction.

If the strict application of the principle were in any way relaxed evasion would be easy and the court would be faced with all the difficulties which the adoption of the rule was designed to avoid. One example will suffice to demonstrate this. Apart from any statutory provisions (such as govern the enforcement of English bankruptcies in this country) the accepted rule is that: "An assignment of a bankrupt's property to the representative of his creditors under the bankruptcy laws of any foreign country, to whose jurisdiction he is properly subject ... operates as an assignment of the movables of the bankrupt situate in England" (Dicey's Conflict of Laws, 6th ed., Rule 99, p. 440). A national of a foreign country after incurring a debt to its revenue,

comas to Ireland bringing with him a quantity of movables. The foreign revenue instead of courting certain defeat by suing him here in its own capacity resorts to bankruptcy proceedings in its own country (as in the case of In re Cohen [FN42], and the creditors' assignee seeks to enforce his claim here. In the course of the hearing it appears that the tax was incurred as the result of discriminatory legislation of a type repugnant to the political views of the enormous majority of the citizens of this country and that the bankrupt has sought asylum herein as a political refugee, bringing with him the remnants of his fortune. The court may admit the claim, may refuse because of the nature of this legislation, or may reject it on the broad principle that it is an attempt to collect the tax of a foreign revenue. To do the first would be to bring the courts into contempt in the eyes of the people and to offend against their own highest principles; to do the second would be publicly to censure the behaviour of a foreign State, a procedure dangerous and possibly arrogant; in the third course alone safety, propriety and a recognition of the feeling of the community are combined.

FN42 [1950] 2 All E.R. 36.

I hold as a fact - and, indeed, I understand it to be admitted - that the sole object of the liquidation proceedings in Scotland was to collect a revenue debt. There is no evidence that any ordinary creditor would not have been paid in full out of the assets left in Scotland, and as far as ordinary creditors are concerned the result of the liquidation proceedings in Scotland would be to deprive them of payment by reason of the priority in Scotland of a revenue debt. I hold that the sole object of the present proceedings before me is also to collect a Scottish revenue debt, and that if I were to decide for the plaintiff the only result of those proceedings would be that every penny recovered after paying certain costs and liquidator's remuneration could be claimed by the Scottish Revenue. That, in my opinion, is the substance of the suit - to collect the revenue claim of a foreign State. Being of this opinion, I reject the claim.

The plaintiffs appealed to the Supreme Court. The appeal was heard by Maguire C.J., Murnaghan and O'Byrne JJ.

1951. June 19. MAGUIRE C.J.

This is an action by Peter Buchanan Ld. and Andrew Simpson Macharg, the official liquidator of the company, which was tried by Kingsmill Moore J., in which the plaintiffs claim an account of all moneys due to them by the defendant as director, trustee or agent of the plaintiff company and for payment of the amount found due to the plaintiffs on the taking of such account. In the alternative the plaintiffs claim payment of a sum of << PoundsSterling> >303,179 6s. 11d. as balance due by the defendant to the plaintiff company for money had and received for the use of the company. Other forms of relief claimed were not pursued at the hearing nor before this court. It was not contested that the defendant had possessed himself of the sum of money claimed, which was assets of the company, nor was it denied that he had removed this sum to this country. Two issues were raised at the trial, first, whether the plaintiffs could maintain an action against the defendant for acts authorized and effected pursuant to the unanimous agreements and decisions of all the members of the company; secondly, whether the action was in substance a suit to collect a revenue debt for a foreign State and as such was maintainable in these courts.

The trial judge held that the defendant's action in removing the assets of the company out of Scotland was for the purpose of committing a fraud on the Scottish Revenue, and that although it was authorized by all the members of the company it was not honest and consequently was not a valid act of the company nor effective to bind it. He found, however, that the proceedings were in substance an attempt to enforce the Scottish revenue laws in this country and held that the court could not lend its aid for this purpose. He accordingly dismissed the action giving the defendant the general costs of the action but allowing to the plaintiffs the costs of five days of the action to be set off against the defendant's costs.

The plaintiffs move this court to reverse and discharge the order of the trial judge in so far only as the judge thereby dismissed the plaintiffs' claims and ordered the payment of any costs of the plaintiffs and for an order in terms which differ only slightly from the claims in the statement of claim on a number of grounds which may be summarized:

(1) That the trial judge had found against the evidence and the weight of evidence and misdirected himself in law in holding that the sole object of the liquidation proceedings in Scotland and of the present proceedings was to collect a Scottish revenue debt and that the only result of the proceedings would be "that every penny recovered after paying certain liquidators' remuneration could be claimed by the Scottish Revenue and that the substance of the suit is to collect the revenue debt of a foreign State."

(2) That the trial judge misdirected himself in law in holding that he had no jurisdiction to adjudicate upon the plaintiffs' claim.

(3) That the judge misdirected himself in law in holding that the principles of private international law referred to in his judgment had any application to the claim pleaded by the plaintiffs in this action.

At the trial the defence had raised the two points already mentioned. The first was that the defendant was not liable to account as a shareholder, as his acts in regard to the company were quite in order and not open to challenge. As already mentioned, the trial judge held against this contention. The second point was that these proceedings were brought to enforce the revenue laws of Scotland and that the courts will not lend their aid for this purpose. This contention was accepted by the trial judge.

The rule relied upon is stated in Dicey's Conflict of Laws, 6th ed., as follows: General Principle No. 2 (p. lxv): "English courts will not enforce a right otherwise acquired under the law of a foreign country which is ordinarily applicable in virtue of English rules of the conflict of laws; (A) where the enforcement of such right involves the enforcement of foreign penal or confiscatory legislation or a foreign revenue law." and Rule 22 (1) (p. 152): "The court has no jurisdiction at common law to entertain an action (1) for the enforcement, either directly or indirectly, of a penal, revenue, or political law of a foreign State."

This general principle and rule are exceptions to the rule arising from the comity of nations that respect is paid to the laws of foreign countries. Note No. 38 in Dicey, at p. 152, cites a number of cases which support the rule in so far as it relates to the enforcement of the revenue laws of another State. Most of these cases were referred to in the argument both in the court below and in this court. They are fully reviewed by the trial judge in his judgment. In In re Visser, Queen of Holland v. Drukker [FN43] Tomlin J. discussed the rule. Having examined its history he said: "My own opinion is that there is a well-recognized rule, which has been enforced for at least two hundred years or thereabouts, under which these courts will not collect the taxes of foreign States for the benefit of the sovereigns of those foreign States." The rule is equally part of our law. It is unnecessary to look for the origin of, or reason for, the rule, nor is it necessary to consider the criticism which has been directed against Lord Mansfield's dictum in Holman v. Johnson [FN44]: "No country ever takes notice of the revenue laws of another." At p. 642 of Dicey's Conflict of Laws, Anson on Contracts, 19th ed., p. 218, is quoted apparently with approval as saying that the dictum is "not supported by any 'trustworthy authority,'" and grounds are given for the view that the dictum is too wide. Dicey goes on to say that: "The doctrine that the law of England does not pay any regard to the revenue laws of a foreign State does not, it is submitted, extend beyond the recognized principle that an English court will not directly enforce foreign tax claims or judgments for the payment of foreign taxes." It is suggested that some significance should be given to the omission of the word "indirectly" in this passage. In my view, however, it was not intended by the author to modify in any way rule 22 (1) which, in my

opinion, states a recognized rule.

FN43 [1928] Ch. 877, 884.

FN44 1 Cowp. 341, 343.

It is submitted by counsel for the appellant that the trial judge considering whether the rule was applicable here should have concerned himself solely with what was the legal effect of the proceedings and not with the indirect result of them. The well-known dictum of Lord Tomlin in Inland Revenue Commissioners v. Duke of Westminster [FN45] was cited. In that case the Duke had so arranged that an annuity took the place of what had formerly been wages. Lord Tomlin said [FN46]: "Apart, however, from the question of contract, with which I have dealt, it is said that in revenue cases there is a doctrine that the court may ignore the legal position and regard what is called 'the substance of the matter,' and that here the substance of the matter is that the annuitant was serving the Duke for something equal to his former salary or wages, and that therefore, while he is so serving, the annuity must be treated as salary or wages." Rejecting this supposed doctrine Lord Tomlin said [FN47]: "This so-called doctrine of 'the substance' seems to me to be nothing more than an attempt to make a man pay not-withstanding that he has so ordered his affairs that the amount of tax sought from him is not legally claimable."

FN45 [1936] A.C. 1; 51 T.L.R. 467.

FN46 [1936] A.C. 1, 19.

FN47 [1936] A.C. 1, 20.

It is argued that while a company is in liquidation it is still a company and operates in Scotland by its liquidator. A foreign State, it is said, recognizes the title given to a liquidator by the laws of his country. I agree that if the payment of a revenue claim was only incidental and there had been other claims to be met, it would be difficult for our courts to refuse to lend assistance to bring assets of the company under the control of the liquidator. But there is no question of that here. The position seems clearly to be as found by the trial judge, that these proceedings were started in Scotland with the purpose of collecting a tax - and that apart from costs and the expenses of the liquidator any moneys recovered will inevitably pass to the Revenue.

The first step in the proceedings against the defendant was taken following the assessment on January 18, 1945, on the company of << PoundsSterling >> 370,000 in respect of excess profits and << PoundsSterling >> 15,000 in respect of income tax. These assessments were confirmed on appeal on March 1. A petition was then issued at the suit of the Lord Advocate suing on behalf of the Inland Revenue to wind up the company compulsorily. On May 2 the Scottish courts made an order for winding up and appointed Sir Andrew Macharg as liquidator on the application of the petitioners. No other creditor is shown to have any claim. In these circumstances the conclusion of fact at which the judge arrived, that the sole object of the liquidation proceedings in Scotland was to collect a revenue debt - and that, apart from the costs and expenses of the liquidator, any moneys received would inevitably pass to the Revenue - was amply justified.

The point raised by the notice of the respondents of an application to vary the order of the High Court only affects the question of costs. The defendant claimed that what he did quoad the company was unexceptionable. It is admitted that there was no formal meeting of the company to authorize the disposal of its property to the defendant and no formal resolution to that effect. It is, however, settled law that no meeting and no formal resolution is necessary. It is necessary, however, that an agreement of this kind to be valid must both be intra vires the company and must be honest. The trial judge held that neither of these requisite conditions were fulfilled. As pointed out by the judge, a company may not, save in exceptional circumstances, reduce its capital to its members. What happened here could not properly be described as a reduction of capital. It was, however, the return of

capital by the company to its members. This was done at a time when there was no outstanding liability save the threatened claim for tax. This did not materialize in the form of an assessment until after the disposal by the company of its assets. Accordingly, there was no immediate liability to tax: In re Winget Ld. [FN48] I consider, however, that the judge was right in holding that the company was bound to have regard to the fact that such an assessment was pending and that it was not then in a position to estimate the amount of profits or assets which could properly be distributed amongst its members. I am, furthermore, in agreement with the trial judge that, from the viewpoint of Scotch law, to do so was not honest. In applying both these tests it is necessary to take notice of the claim of the Scottish Revenue. Again, however, I am in agreement with the trial judge that to take notice of the revenue law of a foreign country in order to apply these tests is not to conflict with the proposition of law which I have already accepted, that no country will enforce the revenue law of a foreign country. In his judgment in In re Visser, Queen of Holland v. Drukker [FN49] Tomlin J. has shown that in certain cases it is necessary to recognize foreign law. Explaining Alves v. Hodgson, [FN50] Clegg v. Levy [FN51] and Bristow v. Sequeville, [FN52] he said [FN53]: "All that those cases do is to indicate that however unwilling the courts may be to recognize foreign law, there are certain cases in which, although they do not enforce foreign revenue law, they are bound to recognize some of the consequences of that law - namely, those cases where, as one of the terms of that law, contracts are rendered invalid by the foreign law."

FN48 [1924] 1 Ch. 550.

FN49 [1928] Ch. 877.

FN50 7 Term Rep. 241.

FN51 3 Camp. 166.

FN52 5 Ex. 275.

FN53 [1928] Ch. 877, 883.

It seems impossible, in considering whether the acts of the members of the company were intra vires and honest, to avoid giving the same limited recognition to the revenue laws of Scotland.

Accordingly, I am of opinion that the judge was right on both of the points argued in this case. The appeal should be dismissed. The application of the respondent should also be refused.

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